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18 || UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

SOUTHERN DIVISION

21 COASTAL COCKTAILS, INC., a
22 California corporation.

Plaintiff.

25 vs.
26 MSRF, INC., an Illinois
27 Corporation, DOES 1 through 10,
Inclusive

Defendants

Case No. SACV12-01738-JST (MLGx)

Honorable Marc L. Goldman
Courtroom 6-A

**ORDER GRANTING JOINT
STIPULATION AND
APPLICATION FOR PROTECTIVE
ORDER**

Complaint Filed: October 9, 2012
Trial Date: None Set

This Protective Order (hereinafter “Order”) is entered pursuant to the Federal Rules of Civil Procedure. The Parties to the above-captioned matter have stipulated and agreed, and the Court recognizes, that the Parties and non-party witnesses to this action possess private, trade secret, business confidential and/or proprietary information, which is confidential and/or of competitive commercial value that will be subject to discovery in this action, but which should not be made available to competitors or to the public generally.

GOOD CAUSE STATEMENT

Good cause exists for entry of this Order because the Parties to this action:
(1) are competitors with one another; (2) have sought and expect to continue to seek in the future the discovery of certain information in this action that is sensitive, private, business confidential, or is of a type and nature that third parties required to get involved in discovery in this action will also believe is sensitive, private, and business confidential, including, but not limited to, information concerning the Parties' trade secrets, information that is competitively sensitive and would harm the Parties if such information were disclosed to their competitors, confidential financial information concerning the Parties, and proprietary business information; (3) believe that unrestricted disclosure or dissemination of such confidential information will cause them business or commercial injury; (4) desire an efficient and practicable means to designate such information as either "Confidential" or "Confidential – Attorneys' Eyes Only" (as those terms are defined below) and thereby help ensure its continued protection against disclosure or dissemination; and (5) have agreed to such means as set forth herein.

24 1. This Order shall relate to all documents, materials, depositions or
25 other testimony, deposition exhibits, interrogatory responses, responses to requests
26 for admissions, and other information produced by the Parties (or third-parties) in
27 connection with this case.

2. Any information that a Party believes in good faith contains or comprises any business confidential, proprietary, commercially sensitive or trade secret information (“Confidential Information”) produced by a Party to this litigation or a third-party in connection with this case (“the Producing Party”) may be designated by the Producing Party as “Confidential.” Information that has been designated as “Confidential” shall be revealed only to:

- (a) the Court, the Court's staff and any Court-appointed mediators, arbitrators or expert witnesses;
- (b) the Parties and their officers, employees, and agents who are providing assistance to counsel in this action (including in-house counsel participating in the defense of this action), and any persons or entities joined as parties in the future;
- (c) the Parties' attorneys of record and those attorneys' associates, assistants, employees, and vendors;
- (d) consultants, technical experts, expert witnesses, potential fact witnesses, and agents involved in the preparation of this action who have signed the "Agreement to be Bound by Protective Order" attached hereto as Exhibit A;
- (e) insurers or representatives of the Parties who have signed the "Agreement to be Bound by Protective Order" attached hereto as Exhibit A; and
- (f) court reporters, their transcribers, assistants, and employees.

3. In addition to the above, documents or Confidential Information produced or disclosed within any proceeding, formal or informal, including but not limited to written discovery, depositions, affidavits/declarations, document production, and expert disclosures, by any of the Parties to this action or by any non-party witness, which are highly sensitive or proprietary or considered a trade secret, may be designated by the Producing Party or witness as “Confidential –

1 Attorneys' Eyes Only." For purposes of this Order, Confidential – Attorneys'
2 Eyes Only information includes, but is not limited to, product formula information,
3 non-public financial information, pricing information, and customer lists.
4 Information or documents designated as "Confidential – Attorneys' Eyes Only"
5 shall be revealed only to:

- 6 (a) outside attorneys of record for a Party to this litigation and
7 those attorneys' associates, assistants, employees, and vendors;
- 8 (b) expert witnesses or expert consultants assisting counsel of
9 record who have signed the "Agreement to be Bound by
10 Protective Order" attached hereto as Exhibit A;
- 11 (c) deponents or other fact witnesses, but only if that witness is not
12 an employee, officer, director, or agent of the Producing Party's
13 competitor, and only if that witness has signed the "Agreement
14 to be Bound by Protective Order";
- 15 (d) the Court, its staff, and any Court-appointed mediators or
16 arbitrators; and
- 17 (e) court reporters, their transcribers, assistants, and employees.

18 Documents or information designated as "Confidential – Attorneys' Eyes Only"
19 shall not be shown to any employees or principals of any Party, any employees or
20 principals of any competitors of the Producing Party, nor shall such documents or
21 information be disclosed or used in any way that would allow such information to
22 become known to employees of any Party or competitors of the Producing Party.

23 4. The Producing Party shall designate information or documents as
24 "Confidential" or "Confidential – Attorneys' Eyes Only" by using the following
25 designation methods:

- 26 (a) In the case of documents produced and responses to written
27 discovery requests, the designation shall be made by placing
28 one or more of the following legends on every page of any such

1 document prior to production, as appropriate:
2 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY”;

4 (b) In the case of depositions, designation of the portion of the
5 transcript (including exhibits) as “Confidential” or
6 “Confidential – Attorneys’ Eyes Only” may be made by a
7 statement to such effect on the record during the course of the
8 deposition or, upon review of such transcript, by counsel for the
9 Producing Party, who shall designate within thirty (30) days
10 after counsel’s receipt of a certified transcript from the court
11 reporter. If a portion of a deposition is designated as containing
12 “Confidential” or “Confidential – Attorneys’ Eyes Only”
13 information before the deposition is transcribed, the transcript
14 of the deposition excerpts containing such Confidential
15 Information shall be bound in a separate volume marked
16 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” as appropriate. If a portion of a deposition is
18 designated as “Confidential” or “Confidential – Attorneys’
19 Eyes Only” during the course of a deposition, counsel may
20 request all persons, except persons entitled to receive
21 Confidential Information pursuant to the requested Order, to
22 leave the room while the deposition is proceeding until
23 completion of the answer or answers containing such
24 Confidential Information. If a portion of a deposition is
25 designated as “Confidential” or “Confidential – Attorneys’
26 Eyes Only” after the deposition is transcribed, counsel for the
27 Producing Party shall list on a separate piece of paper or in an
28 e-mail to all counsel the numbers of the pages of the transcript

designed as “Confidential” or “Confidential – Attorneys’ Eyes Only,” and send the list to counsel for all parties. All parties shall affix the list to the face of the transcript and each copy thereof. Pending such designation by counsel, the entire deposition transcript, including exhibits, shall be deemed “Confidential – Attorneys’ Eyes Only.” If no designation is made within thirty (30) days after receipt of a certified transcript from the court reporter, the transcript shall be considered not to contain any confidential information;

(c) Any Confidential Information produced in a non-paper medium (e.g., videotape, audiotape, computer disk, etc.) may be designated by labeling the outside of such non-paper medium as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” In the event a Party receiving information designated as “Confidential” or “Confidential – Attorneys’ Eyes Only” generates any hard copy, transcription, or printout from any such designated non-paper media, such Party must stamp each page “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and the hard copy, transcription or printout shall be treated as it is designated.

5. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a Party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Failure of counsel to designate information as Confidential or Confidential – Attorneys’ Eyes Only shall not be deemed a waiver of confidentiality, and Confidential Information may thereafter be designated so. The Parties agree that the claw-back procedures in FRCP 26(b)(5)(b) shall apply, and

1 that neither Party will assert that delay in demanding the return of certain
 2 documents constitutes a waiver of any privilege or protection.

3 6. A Party may designate as “Confidential” or “Confidential –
 4 Attorneys’ Eyes Only” documents or discovery materials produced by a non-party
 5 by providing written notice to all Parties of the relevant documents numbers or
 6 other identification within thirty (30) days after receiving such documents or
 7 discovery materials.

8 7. Absent a specific order by this Court, and except as provided below,
 9 once information has been designated as “Confidential” or “Confidential –
 10 Attorneys’ Eyes Only,” it may be used solely in connection with the following
 11 action: *Coastal Cocktails, Inc. v. MSRF, Inc.*, Case No. 12-01738, pending in the
 12 United States District Court for the Central District of California, and shall not be
 13 used for any other purpose. Any documents or information designated as
 14 “Confidential” or “Confidential – Attorneys’ Eyes Only” that are produced shall be
 15 produced only to counsel of record for the Parties in this litigation. Counsel for
 16 any Party who obtains any Confidential Information from any other Party shall
 17 protect it and its contents from disclosure to anyone save the persons designated in
 18 this Order. Confidential Information shall not be used or disclosed directly or
 19 indirectly by the Party receiving such Confidential Information to persons other
 20 than those delineated in Paragraphs 2(a) through (f) and 3(a) through (e).

21 8. Should either Party wish to share Confidential Information with any
 22 potential witness who is not included in Paragraphs 2(a) through (f) and 3(a)
 23 through (e) above, the Parties agree to meet and confer in good faith to address and
 24 resolve this issue, and such resolution may include filing a Supplemental
 25 Stipulation and [Proposed] Protective Order Regarding Confidentiality Agreement
 26 that would include any such potential witness.

27 9. Any Party that seeks to make disclosure of Confidential Information
 28 permitted under this Order to a person listed in Paragraphs 2(a) through (f) and

1 3(a) through (e) above shall, prior to such disclosure, advise the recipient of such
2 information of the contents of this Order and require each such person to whom
3 such disclosure is made to execute the “Agreement to be Bound by Protective
4 Order” attached hereto as Exhibit A if so required under Paragraphs 2 or 3. All
5 such “Agreements to be Bound by Protective Order” shall be retained by counsel
6 for the Party who discloses Confidential Information in this way.

7 10. Before any such Confidential Information, or the substance or
8 summary thereof, shall be disclosed to experts or consultants retained by the
9 Parties, the Parties shall tender a copy of this Order to each such expert or
10 consultant in order that each such entity or person to whom such disclosure of
11 Confidential Information is made shall be on notice and fully informed that the
12 existence and substance of the Order is, and is intended to be, equally binding upon
13 it, him or her, as well as upon the Parties and their counsel. In addition, those
14 experts and consultants shall sign and abide by the terms of the “Agreement to be
15 Bound by Protective Order” attached as Exhibit A. Those experts and consultants
16 shall not give, show or otherwise divulge any of the Confidential Information to
17 any entity or person except as specifically provided for by this Order.

18 11. Subject to the terms of Paragraphs 2(a) through (f) and 3(a) through
19 (e) above, discovering counsel may show documents or information designated as
20 “Confidential” or “Confidential – Attorneys’ Eyes Only” to a witness at a
21 deposition and examine that witness concerning the same. If so required under
22 Paragraphs 2 or 3, those witnesses shall sign and abide by the terms of the
23 “Agreement to be Bound by Protective Order” attached as Exhibit A. Neither the
24 witness nor his counsel, if any, may retain or be given any copy of the Confidential
25 Information including, but not limited to, a copy of any pages of the transcript of
26 the deposition that are designated “Confidential” or “Confidential – Attorneys’
27 Eyes Only.” The court reporter shall be instructed to give the witness written
28 notice when the transcript has been prepared, stating that the witness may inspect

1 the transcript and its exhibits in the court reporter's office, and that if the original
2 deposition transcript is not signed within thirty (30) days after the date of the notice,
3 it will be used as if it had been signed. If the witness does not sign the original deposition transcript within thirty (30) days after the date of the written notice described in this paragraph, the deposition transcript may be used as if it had been signed.

7 12. Any Confidential Information that is filed with or submitted to the Court shall be filed under seal. If any Confidential Information is submitted to the Court under seal, the Party submitting the Confidential Information shall file a copy of the pleading containing the Confidential Information in redacted form. Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a Party seeks permission from the Court to file material under seal. The Producing Party shall cooperate in good faith with the Discovering Party in performing such acts and supplying such information as is necessary to file Confidential Information under seal and obtain an order permitting filing under seal.

17 13. Nothing contained herein shall prevent any party from using Confidential Information in connection with any trial, hearing, or other public proceeding in this matter, such as displaying as evidence on a board or by electronic means such as a Power Point presentation. To the extent a party intends to utilize information covered by this Order in such a manner, the party will provide counsel for the Producing Party at least seven business days advance written notice. The Producing Party shall then have an opportunity to seek to exclude the public from the hearing by promptly filing a motion with the Court. The filing of such a motion shall not extend any briefing schedules for motions that utilize any documents covered by this Order unless stipulated to by the Parties. Once the Producing Party has filed such a motion, the Party seeking to use the Confidential Information shall be prohibited from using the Confidential

1 Information in a public proceeding without an Order of the Court or the written
2 consent of counsel for the Producing Party. The Producing Party shall proceed in
3 good faith to obtain a ruling on any such motion in a timely manner so as to permit
4 the use of any documents covered by this Order in the hearing and determination
5 of any motions.

6 14. Any Party may object to the designation of particular documents or
7 other materials as Confidential by giving written notice to the Party making the
8 designation and to all other parties. Such notice shall identify with reasonable
9 specificity the documents or other materials to which the objection is directed and
10 the basis for the objection. The Parties shall attempt to resolve any such dispute by
11 meeting and conferring in good faith on an informal basis within ten (10) business
12 days of notice of the disagreement. If the dispute has not been resolved within this
13 time period, the Party seeking to de-designate the information may initiate
14 preparation of the joint stipulation pursuant to Local Rule 37-2.2. Completion and
15 filing of the joint stipulation shall be as set forth in Local Rule 37-2.2. The burden
16 of proving that information has been properly designated as “Confidential” or
17 “Confidential – Attorneys’ Eyes Only” is on the Party who made the designation.
18 Designated materials shall retain their status and category of designation until
19 either: (a) the Parties expressly agree otherwise in writing, or (b) the Court orders
20 otherwise, unless such order is stayed pending appellate review.

21 15. This Order shall not:

22 (a) Prejudice the rights of either Party to raise any objection to any
23 request for discovery;

24 (b) Prejudice the rights of either Party to object to authenticity or
25 admissibility of any document, testimony or evidence subject to
26 this Protective Order;

- (c) Prejudice the right of either Party to seek this Court's determination whether particular information should be produced or should be subject to the terms of this Order;
- (d) Prejudice the rights of either Party to apply to this Court for a further protective order relating to any Confidential Information; or
- (e) Prevent the Parties from agreeing in writing to alter or waive the provisions or protections provided for herein with respect to any particular Confidential Information and to seek Court approval for such modification, if necessary.

11 16. This Order has no effect upon, and its scope shall not extend to, any
12 Party's use of its own Confidential Information.

13 17. The provisions of this Order shall, absent written permission of the
14 Producing Party or further order of this Court, continue to apply after the
15 conclusion of this action, including without any limitation any appeals therefrom.

16 18. Within 45 days after termination of this litigation, including any
17 appeals therefrom, the originals and all copies of information designated as
18 “Confidential” or “Confidential – Attorneys’ Eyes Only” shall, at the direction of
19 the Producing Party, be destroyed or returned to the Producing Party. Any Party
20 instructed to destroy documents will certify in writing to the Producing Party that
21 the documents have been destroyed.

23 SO ORDERED AND ENTERED on this 5th day of February, 2013, BY
24 THE COURT: 

**Honorable Marc L. Goldman
United States Magistrate Judge**

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

4 The undersigned has been provided with a copy of the foregoing Stipulated
5 Protective Order in the lawsuit captioned *Coastal Cocktails, Inc. v. MSRF, Inc.*,
6 Case No. 12-01738, pending in the United States District Court for the Central
7 District of California; has had an opportunity to review the Stipulated Protective
8 Order; and is fully familiar with all of its terms. By executing this Agreement to
9 be Bound by Protective Order, the undersigned agrees to be bound by the terms of
10 the Stipulated Protective Order.

By:

Print Name:

Address: